IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.212 OF 2006

Mahadeo Krishna Ule
(since deceased through L.Rs.) & Ors. ...Appellants

Vs.

Devantibai Ramkripal Jayaswal & Ors. ...Respondents

Mr. Rajiv Patil and Sachin Punde for the Appellants
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 18,2006.

P.C.:

1. Heard learned Advocate for the Appellants. The Appellants are the original Defendants who have suffered a decree for removal of encroachment. The decree of encroachment relates to the area of only 11 sq.meters which has been confirmed in an Appeal preferred by the present Appellants/Defendants to the District Court.

2. The learned Advocate for the Appellants submitted that on the application made by the original Plaintiffs, a retired Survey Officer was appointed as a Court Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) for the purposes of measuring the properties and preparing a map. He submitted that the appointment of the said person is contrary to the provisions of the Maharashtra Land Revenue Code,1966. He relied upon the proviso of Rule 9 of Order 26 of the said

Code and submitted that the only Survey Officer under the Maharashtra Land Revenue Code, 1966 could have been appointed as the Court Commissioner. He pointed out that an application was made in that behalf by the Appellant which was rejected by the Trial Court.

3. I have considered the submissions. The Advocate for the Appellants could not show any rules which are framed by the State Government in exercise of powers conferred by the proviso to Rule 9 of Order 26 of the said Code. Therefore, the appointment of a retired Survey Officer cannot be said to be contrary to the Rule 9 of Order 26 of the said Code.

4. So far as application made by the Appellants to the Trial Court for appointment of Survey Officer is concerned, I find that the said order was not challenged in the Appeal preferred by the Appellants. In any case, once no fault can be found with the order appointing the retired Survey Officer as a Court Commissioner, no fault can be found with order rejecting the application made by the Appellants. Second Appeal is dismissed with no order as to costs.

Judge.